



November 3, 2000

Mr. Stephen L. Enders, Director  
West Texas Community Supervision  
and Corrections Department  
County Archives Building  
800 East Overland, Suite 100  
El Paso, Texas 79901

OR2000-4300

Dear Mr. Enders:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 140898.

The West Texas Community Supervision and Corrections Department (the "department") received a request for personnel and other information relating to department positions for which the requestor has applied. The department states that it has released the majority of the responsive information to the requestor. You claim that portions of the remaining information, which you have highlighted, are excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of the information requested.<sup>1</sup>

Initially, we note that section 552.023 of the Government Code provides, in pertinent part:

- (a) A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(b) A governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.

(c) A release of information under Subsections (a) and (b) is not an offense under Section 552.352.

...  
This section grants a special right of access to a person or a person's authorized representative to records that contain information relating to the person that are otherwise protected from public disclosure by laws intended to protect that person's privacy interests. The department contends that some of the submitted documents contain information that implicates the privacy interests of the requestor. However, the requestor has a special right of access to the information relating to him that would otherwise be withheld to protect his privacy interests. Thus, the department may not withhold from the requestor the specific information that implicates the requestor's privacy interests under sections 552.101, 552.117, or 552.130.

The department asserts that portions of the submitted documents are excepted from required public disclosure under section 552.101 of the Government Code in conjunction with common law and constitutional privacy. 'Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section also encompasses common law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information must be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

The constitutional right to privacy protects two interests. Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. Open Records Decision No. 600 at 4 (1992). The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.*

The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the "most intimate aspects of human affairs." *See* Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from public disclosure under common law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). However, after reviewing the documents at issue, we are unable to find any financial information that does not involve a transaction between an individual and a governmental body. Further, the majority of the financial information the department has highlighted as personal financial information is information relating to the salary of a public employee that is specifically made public under the Act. Gov't Code § 552.022(a)(2) (name, sex, ethnicity, salary, title, and dates of employment of all employees and officers of a governmental body are specifically made public). Therefore, the department may not withhold any of the highlighted information as personal financial information protected under section 552.101 by either common law or constitutional privacy.

Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code in conjunction with federal law. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See id.* You do not inform us of any specific provision of law, enacted on or after October 1, 1990, under which these social security numbers were obtained or maintained. Thus, we have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any specific provision of law, enacted on or after October 1, 1990.

We note, however, that criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open

Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We have marked a document that is CHRI generated by TCIC and NCIC. Accordingly, the information is excepted from required public disclosure by section 552.101 of the Government Code.

The department also asserts that portions of the submitted information must be withheld under section 552.117 of the Government Code. Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the department may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. The department argues that "the employees have a written request that implies that this information will be kept private, and those who have signed it release this protection of confidentiality only for a background check." You have submitted a copy of the background check release form. However, this form does not comply with the requirements of section 552.024 and, as such, does not constitute a valid election form for the purposes of section 552.117.<sup>2</sup> Additionally, you do not argue, nor is it apparent to us, that the subject employees are "peace officers," as defined by article 2.12 of the Code of Criminal Procedure, for the purposes of section 552.117(2). *See also* Gov't Code § 76.005(c). Therefore, the department may not withhold the highlighted addresses, phone numbers, social security numbers, or family member information under section 552.117.

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<sup>2</sup>Please note that section 552.024 outlines the procedures and requirements that a governmental body must follow concerning the election to deny public access to a public employee's home address, telephone number, social security number, and family member information.

Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

With the exception of information pertaining to the requestor, you must withhold all Texas driver's license numbers under section 552.130.

In summary, the department must withhold all driver's license numbers but that of the requestor. All responsive CHRI must be withheld. The remaining responsive information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Amanda Crawford".

Amanda Crawford  
Assistant Attorney General  
Open Records Division

AEC/er

Ref: ID# 140898

Encl: Submitted documents

cc: Mr. Art Loya  
624 Richardson  
El Paso, Texas 79927  
(w/o enclosures)